IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Cr. Appeal No.120 Of 2000.
Judgment reserved on 19.6.2007.
Date of decision: June 25th, 2007.

State of Himachal Pradesh. ……. Appellant.

Vs.

Mahender Singh and Others. ……. Respondents.

Coram

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? No.

For the Appellant: Mr.V.K.Verma, Addl.Advocate General.

For the respondents: Mr.Pt. Om Parkash Sharma.

Surinder Singh, J:

The respondents faced trial before the learned Additional Chief Judicial Magistrate, Dehra, under Sections 353, 332, 341, 356 and 506 of the Indian Penal Code, in Criminal Case No.139-II/90, decided on 16.9.1999.

After appreciating the evidence and upon hearing the parties, the respondents were acquitted.

The State felt aggrieved and dissatisfied by the impugned judgment of acquittal, accordingly, the instant appeal has been filed on the ground that it was a proved case for conviction of the respondents and the trial court has decided the case on the conjecture and surmises.

Whether reporters of local Papers may be allowed to see the judgment? Yes.

Leave to appeal was granted by this Court on 31.3.2000. Now the matter has been taken up for final hearing.

I have heard Shri V.K. Verma, learned Additional Advocate General for the appellant-State and Pt. Om Parkash Sharma, learned counsel for the respondents and have gone through the record of the case.

In short, the facts giving rise to the instant appeal are that Bus No.HP-38-2408, belonging to Himachal Road Transport Corporation was being driven by Mehar Chand, Driver and Tej Singh, complainant was the conductor. It was on his way to Shimla from Katra. When it reached near village Bharoli (near Toll Tax Barrier at Nadaun Bridge), a Bus bearing No.HPK-3855, belonging to Prem Bus Service, came from behind and stopped in front of HRTC Bus giving no way to their bus. 3/4 persons including the Driver of that Bus named Mahender Singh and conductor Durga Dass respondents got down. They entered the HRTC Bus and started giving beatings to the conductor aforesaid as well as to Mehar Chand, Driver. Tej Singh, Conductor sustained the injuries on his head and right eye. His clothes were torn off and his Cash bag, HMT Quartz watch and one gold chain weighing one tola got lost. Thereafter the respondents forcibly got executed a writing from him (the Conductor) that he did not suffer any loss and threatened him with dire consequences, if any case is registered against them. Mehar Chand drove of his HRTC bus to Nadaun and informed Police Station Jwalamukhi. On receiving the information, ASI Om Parkash came to the Bus stand, recorded the statement Ext.PW2/A of complainant Tej

Singh under Section 154 of the Code of Criminal Procedure, on the basis of which FIR No.68/90 was formally registered on 12.7.1990. The police prepared the site plan of the alleged incident (not exhibited) and took into possession blood stained clothes of Tej Singh. He was medically examined. (MLC was also not exhibited before the trial Court nor the Doctor was produced to substantiate the fact of injuries.) However, the respondents were charge-sheeted under Sections 353, 332, 341, 356 and 506 of the Indian Penal Code. Charges were put to them and each of them denied the charges, pleaded not guilty and claimed trial. To prove its case, prosecution examined eight witnesses. The respondents were also examined under Section 313 of the Code of Criminal Procedure. They denied the circumstances put to each of them and according to them, a false case was framed against them, however no defence was led.

Upon hearing the parties and going through the evidence on record, the learned trial Court acquitted the respondents. In the best wisdom of the trial court, the story of the prosecution was required to be corroborated by leading the independent witnesses, in view of the material contradictions, when it had come in evidence that about 45 passengers were there in the bus. The version deposed by PW2 regarding suffering of the injuries was also not supported by the medical evidence on record. Other material witnesses were withheld casting a reasonable doubt on the genuineness of the prosecution story. PW2 Tej Singh has not stated anything regarding executing a writing, as alleged by him.

Mehar Chand, driver gave some other story regarding taking a writing from him. No such writing was ever recovered from the respondent during the investigation. The Checking Inspector, who is stated to have intervened them was allegedly given beatings by the respondents, but the perusal of statement of PWs 2 and 3 did not show anything to support this version of PW1. PWs also contradicted on the material point of arrival of alleged Bus HPK 3855, as initially set in the prosecution case, but PWs 1 to 3 deposed, in the court alleging different story that the bus was already parked on the spot in such a way that it blocked the road, so that their bus may not pass through. Precisely, the statements of these witnesses had given contrary version to each other. The missing of the gold chain, HMT Quartz Watch and the Cash bag is not proved, on the top of it the Investigating Officer, and had recorded the statements of the witnesses under Section 161 of the Code of Criminal procedure and collected the evidence and finally concluded the police report was not examined, despite the repeated opportunities and the respondents had no opportunity to cross-examine him to show that the version given by the complainant and his Driver was not worthy of credence.

On the strength of the above conflicting and contradictory evidence and also the material omission, learned trial court recorded the findings of acquittal. I have also scrutinized and reappraised the evidence on record. The view taken by the learned trial court is born out from the evidence recorded before the trial court, which was possible

and appears to be reasonable. The innocence of the respondents and accused is not diluted in appeal against their acquittal. The innocence of guilt remains throughout till the contrary is proved. But, if two views are deducible and the view taken by the trial court is possible from the evidence on record, the benefit of favourable view to the accused is to be given.

Therefore, in my opinion for the reasons aforesaid, the impugned judgment is neither perverse nor dehors the evidence, hence, the impugned judgment is upheld, accordingly the appeal is dismissed. The respondents are discharged of the bail bonds entered at any time during the proceedings of this case.

June 25th, 2007. **(Surinder Singh)**
(PDS) **Judge**.